As illustrated by the case of *Capps* v. *State* (Ark. 1913) 159 S. W. 193, certain States, feeling the injustice of the rule, have made a statutory exception admitting the affidavit of a juror to impeach a verdict determined by lot or chance.[7] Others, have limited the doctrine to affidavits concerning matters taking place during the jury's retirement, and hold it competent for a juror to testify as to influences and occurrences outside the juryroom during the progress of the trial.[8] However, these exceptions merely demonstrate a partial recognition of the rule's deficiencies, and fail in any way to justify its existence.

By far the most reasonable position has been taken in some of the western States, under the leadership of Iowa.[9] The modern practice in these jurisdictions is shown in the recent case of *Maryland Casualty Co.* v. *Seattle Elec. Co.* (Wash. 1913) 133 Pac. 1097. Here, a juror's affidavit is received as competent evidence pertaining to matters either within or without the juryroom which do not essentially inhere in the verdict. Although some confusion has arisen in ascertaining exactly what matters do essentially inhere in the verdict, the accepted interpretation seems to be that a juror may testify to any facts that transpired within his own personal observation, but not to the effect of those facts upon the deliberations of the jury, nor to the motives and beliefs which led to the final verdict.[10] This doctrine, although a complete departure from the majority rule, seems satisfactory both in theory and practice. Moreover, inasmuch as it is almost universally recognized that a juror's affidavit is admissible to support his verdict,[11] it seems but reasonable when a verdict should be impeached upon grounds of misconduct that those who are best qualified to testify to the facts of such misconduct should be heard.

CONCURRENT JURISDICTION OVER RIVER BOUNDARIES.—In order to avoid the otherwise difficult determination of jurisdiction dependent upon the exact location on boundary waters of the place of an occur-

[7]California Code of Civ. Proc. § 657; Idaho, Rev. Codes § 4439. Moreover, it has been held that a quotient verdict is a "chance" verdict within the meaning of the statutes. Dixon *v.* Pluns (1893) 98 Cal. 384.

[8]Rush *v.* St. Paul City Ry. (1897) 70 Minn. 5. In Ohio it has been said that a juror's affidavit is not admissible to impeach a verdict, unless evidence *aliunde* is first offered. Parker *v.* Blackwelder (1893) 7 Oh. C. C. 140; Farrer *v.* State (1853) 2 Oh. St. 54.

[9]This minority rule, which is followed in Iowa, Kansas, Nebraska, Washington, and has been received with approval in some federal courts, see Mattox *v.* United States (1892) 146 U. S. 140, may be said to have originated in the case of Wright *v.* Ill. etc. Tel. Co. (1866) 20 Ia. 195, 210, although a similar doctrine had been expounded many years before in Tennessee. See Crawford *v.* State (Tenn. 1821) 2 Yerg. 60, 24 Am. Dec. 467 and note. By statute in Texas, a verdict may be attacked by the testimony of jurors given in open court but not by their affidavits. See San Antonio & A. P. Ry. *v.* Wells (Tex. 1912) 146 S. W. 645.

[10]This seems analogous to the application of the parol evidence rule with respect to written instruments, although it is not permissable to go behind the instrument (here, the verdict) to show the deliberations and intent of the parties, it is always proper to establish such informalities and breaches of prescribed procedures as *per se* invalidate the document. See 4 Wigmore, Evidence, § 2352.

[11]See Phillips *v.* Town of Scales Mound (1902) 195 Ill. 353; Haight *v.* Elmira (N. Y. 1899) 42 App. Div. 391.

rence,[1] Congress has established a concurrent jurisdiction over the river boundaries of States entering the Union,[2] similar to that which some of the original States adopted by compact.[3] Although such jurisdiction has existed since the formation of the Union, there is still sharp conflict of authority as to its extent and limitations. Some inclination has been manifested to restrict its scope to mere legislative control, or to confine its operation to matters concerning navigation,[4] but the Supreme Court has taken the better view by characterizing the jurisdiction as executive, legislative and judicial, and including all matters of legal cognizance, whether criminal or civil, arising on the river and of a transitory nature.[5] It is universally recognized, however, that such a grant to a State of jurisdiction over part of a river outside its territorial limits, does not give a dominion of the soil so that the State could tax property or abate a permanent nuisance attached to the land outside its boundaries.[6] Since the situs of such property is fixed, this logical exception occasions no inconvenience.

If the jurisdiction of each State over the whole river should be entirely independent of the other[7] a unique situation would be created, but one practicable in every regard if the decisions of each were *res adjudicata* as to the other, notwithstanding any difference in their laws.[8] A wiser policy, however, would seem to demand that each State should, in general, exercise only such powers over the whole of the river as are reasonably consistent with the exercise of similar powers over the same portions of the river by the other State.[9] Under this rule as applied to crimes,[10] either State could punish an act which was *malum in se,* or *malum prohibitum* in both States, although with different penalties; and the State first acquiring jurisdiction of the person would have the right to pass final judgment. But if the act were *malum prohibitum* in only one State the exercise of its jurisdiction would be inconsistent with the exercise of the same jurisdiction by the other, then, neither would be able to enforce its statute over

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[1]See Gilbert *v.* Moline Water Power & Mfg. Co. (1865) 19 Ia. 319.

[2]See *In re* Mattson (C. C. 1895) 69 Fed. 535.

[3]See Handly's Lessee *v.* Anthony (1820) 5 Wheat. 374.

[4]Meyler *v.* Wedding (1899) 107 Ky. 310; see Buck *v.* Ellenbolt (1892) 84 Ia. 395.

[5]Wedding *v.* Meyler (1904) 192 U. S. 573, reversing, Meyler *v.* Wedding, *supra.* And this view appears to be that of many state courts. See Sherlock *v.* Alling Admr. (1873) 44 Ind. 184; State *v.* Metcalf (1896) 65 Mo. App. 681; State *v.* George (1895) 60 Minn. 503; Rorer, Inter-State Law 336 *et seq.*

[6]Roberts *v.* Fullerton (1903) 117 Wis. 222. This case might be held to support the limitation of jurisdiction in Nielson *v.* Oregon (1908) 212 U. S. 315. And see Chicago & N. W. Ry. *v.* City of Clinton (1893) 88 Ia. 188; Gilbert *v.* Moline Water Power & Mfg. Co., *supra;* State *v.* Mullen (1872) 35 Ia. 199.

[7]State *v.* Nielson (1908) 51 Ore. 588, reversed, Nielson *v.* Oregon, *supra.*

[8]*Cf.* Commonwealth *v.* Frazee (Pa. 1857) 2 Phila. 191; but see Phillips *v.* People (1870) 55 Ill. 429.

[9]See Keator Lumber Co. *v.* The St. Croix Boom Corp. (1888) 72 Wis. 62; State *v.* Faudre (1903) 54 W. Va. 122; Arnold *v.* Shields (Ky. 1837) 5 Dana * 18.

[10]See *In re* Mattson, *supra.*

the territory of the other.[11] Although this doctrine defeats the purpose of the general rule, it seems better from the peculiar exigencies of this limited class of cases that the State should be forced to prove that the act occurred within its territorial limits.[12]

An internal difficulty arises as to the exercise of the extraterritorial authority where a State has vested its entire criminal jurisdiction in county or district courts whose local jurisdictions are confined to the county boundaries.[13] In the absence of specific statutory provision they would generally have no jurisdiction beyond those boundaries,[14] but because of the impossibility of state jurisdiction without courts to administer the laws, it is held that under the statutes ratifying the concurrent jurisdiction,[15] and even at common law, the county courts are given jurisdiction of the adjoining territory outside their boundaries, but within the jurisdiction of the State as an incident to their defined powers.[16] In the recent case of *Brown* v. *State* (Ark. 1913) 159 S. W. 1132, the defendant claimed that his conviction, by a county court for a crime, which was a *malum prohibitum* in both States, committed outside the territorial limits of the State, was unconstitutional under a provision insuring him a trial by a jury of the county in which the crime was committed. But the court, by accepting the general view that the county court had jurisdiction, extended the tendency to disregard the literal wording of the law in order to effectuate the State's jurisdiction.[17] By sustaining the conviction the court in effect held that the constitution, despite its clear expression, merely assured the accused a trial by a jury of the county whose court had jurisdiction.[18]

RIGHT OF FOREIGN CORPORATIONS TO PLEAD STATUTE OF LIMITATIONS.—The right of an individual to avail himself of the Statute of Limitations depends upon his liability to personal service of process;[1] and under the provisions which suspend the operation of the Statute during the absence of the defendant from the jurisdiction, the test is not the physical presence of the defendant, but the possibility of

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[11]Where the same act is *malum prohibition* in both States it would appear to be within the scope of concurrent jurisdiction and no special assent should be required, and adverse action, *cf.* State *v.* Faudre, *supra,* would not be necessary where the act is *malum prohibition* in only one. Nielson *v.* Oregon, *supra; cf. Ex parte* Desjeiro (C. C. 1907) 152 Fed. 1004; 22 Harvard Law Rev. 599. Possibly the latter view limits to some extent the legislative jurisdiction allowed in Wedding *v.* Meyler, *supra.*

[12]See McFall *v.* Commonwealth (Ky. 1859) 2 Metc. 394; *cf.* Church *v.* Chambers (Ky. 1835) 3 Dana *274.

[13]Arkansas, Kirby's Dig. § 2085.

[14]State *v.* Davis (1856) 25 N. J. L. 386; but see Annie M. Smull (U. S. D. C. 1872) 2 Sawy. 226; *cf.* Welsh *v.* State (1890) 126 Ind. 71.

[15]State *v.* Mullen, *supra; cf.* State *v.* Metcalf, *supra;* Acts of Ark. 1911 Act. 81, p 46.

[16]Biscoe *v.* State (1887) 68 Md. 294; State *v.* Seagraves (1905) 111 Mo. App. 353; *cf.* 5 Columbia Law Rev. 470.

[17]*Cf.* Carlisle *v.* State (1869) 32 Ind. 55.

[18]*Cf.* State *v.* Cameron (Wis. 1850) 2 Chand. 172.

[1]Hart *v.* Kip (N. Y. 1893) 74 Hun 412; see Turcott *v.* Railroad (1898) 101 Tenn. 102.